UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/40/Rev.1
3 October 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session

Agenda item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Report of the Working Group on Indigenous Populations on its ninth session

Chairperson/Rapporteur: Ms. Erica-Irene A. Daes

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Introduction

Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, on the Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7 and Add.1-5);

(b) Give special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and the differences in the situations and aspirations of indigenous peoples throughout the world.

2. In addition to the review of developments and the evolution of international standards which are separate items on the Working Group's agenda, the Group has over the years considered a number of other issues relating to indigenous rights. A number of reports requested by the Sub-Commission in its resolutions 1990/25, 1990/28 and 1990/29 were available to the Working Group. These included the preliminary report by the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous peoples, a working paper by the Chairperson/Rapporteur, Ms. Erica-Irene Daes, on the question of the control and ownership of the cultural property of indigenous peoples, and a second working paper, prepared by Mr. Asbjørn Eide and Ms. Christy Mbonu, on further suggestions for United Nations activities for the International Year for the World's Indigenous People. These reports were considered under items 5 (a), 6 and 7 (a), respectively.

Participation in the session

3. By decision 1990/126 of 31 August 1990, the Sub-Commission decided on the following composition of the Working Group at its ninth session: Mr. Miguel Alfonso Martínez, Ms. Erica-Irene A. Daes, Mr. Ribot Hatano, Ms. Christy Mbonu, and Mr. Danilo Türk.

4. The session was attended by Mr. Alfonso Martínez, Ms. Daes, Mr. Hatano, Ms. Mbonu and Mr. Türk.

5. The following States Members of the United Nations were represented by observers: Argentina, Australia, Bangladesh, Bolivia, Brazil, Canada, Colombia, Chile, Cyprus, Denmark, El Salvador, Finland, France, Greece, India, Indonesia, Japan, Myanmar, New Zealand, Norway, Peru, Philippines, Senegal, Spain, Sri Lanka, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

6. The Holy See was represented by an observer.

7. The United Nations Centre on Transnational Corporations and the International Labour Office were represented by observers.

8. The Inter-American Commission on Human Rights of the Organization of American States was represented by an observer.

9. The Greenland Home Rule Government was represented by observers.

10. The Aboriginal and Torres Strait Islander Commission of Australia was represented by observers.

11. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers:

(a) Indigenous peoples

Grand Council of the Crees (Quebec), Indian Council of South America (CISA), Indian Law Resource Center, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Services Secretariat, National Indian Youth Council, Nordic Saami Council, and the World Council of Indigenous Peoples.

(b) Other organizations

Amnesty International, Anti-Slavery International, Baha'i International Community, Commission of the Churches on International Affairs (World Council of Churches), Foodfirst Information and Action Network, Friends World Committee for Consultation, Habitat International Coalition, Human Rights Internet, International Commission of Jurists, International Federation of Human Rights, International Federation Terre des Hommes, International Fellowship of Reconciliation, International League for the Rights and Liberation of Peoples, International Movement for Fraternal Union among Races and Peoples, International Organization for the Elimination of All Forms of Racial Discrimination, International Work Group for Indigenous Affairs (IWGIA), Procedural Aspects of International Law Institute, Women's International League for Peace and Freedom, World Alliance of Reformed Churches, World Conference on Religion and Peace, and World University Service.

12. The following indigenous peoples' nations and organizations, as well as other organizations and institutions, were represented at the session and furnished information to the Working Group with its consent:

(a) Indigenous peoples' nations and organizations

Adeimad, Ad Mapu, Aetas' Association in western Luzon, Ainu Association of Hokkaido, Algonquins of Barriere Lake, Alliance of Taiwan Aborigines, Amauta, Asia Indigenous Peoples Pact, Asociacion Indigena de la Republica Argentina, Asociacion de Parcialidades Indigenas, Assembly of First Nations, Assembly of Manitoba Chiefs, Association of Minority Peoples of the Soviet North, Azachis Zapoteca, B.A.T. Ekonda, Bougainville Republic, Central Aboriginal Land Council, Centro Cultural de Jovenes Aymaras (Bolivia), Centro Union Achiri, Comision Juridica de los Pueblos de Integracion Tawantinsuya (COJPITA), Comite Campesino del Altiplano Cakchiquel (Guatemala), Comite de Unidad Campesina de Guatemala, Comite Exterior Mapuche, Comite Organizador Indigena Kaqchique, Confederacion de Nacionalidades Indigenas del Ecuador (CONAIE), Confederacion Indigena del Oriente y Amazonia Boliviano, Congreso General Guaymi, Conseil des Atikameku et des Montagnais, Coordinadora de las Organizaciones de la Cuenca Amazonica, Cordillera Peoples Alliance of the Philippines, Cree Regional Youth Council, Etnias, Federacion Shuar (Ecuador), FENEMAD, Four Nations, Frente Independiente de Pueblos Indios, Guarani (Argentina), Hmong People, Independent First Nations Alliance, Indian Council of Indigenous and Tribal People, International Indigenous Commission, Joseph Bighead Treaty Six, Jumma, Kamp IP - Philippines, Kamp - LM - Philippines, Karen National Union, Kipoc, Lac Seul First Nation, Mapuche, Maori Aoteroa (Ngaati Te Ata Tribal Nation, Kaitahu, Raukawa, Ngaiterangi, Tearawa, Ngaitamarawaho, Taranaki, Ngatitewai, Ngati Tuwharetoa, Ngati Kahungunu Tribal Nation, and Ngati Porou Tribal Nation), Maori Legal Service, Micmaq Grand Council, Mikmaw People, Mohawk Nation, Movement Tupay Katari (Bolivia), Movimiento Accion Reconciliacion, Movimiento Estudiantil Chicano de Aztlan, Movimiento Social Indigena Quintinlane, Naga Peoples Movement for Human Rights, National Committee to Defend Black Rights (CDBR) Aboriginal Corporation (Australia), Navajo Nation - Navajo-Hopi Land Commission, North Pacific Rim Alutiiq, Northern Aboriginal Land Council, Organizacion de Mujeres del Kollasuyo (OMAK), Organizacion Pueblos Indigenos (Ecuador), Potiguara Peoples, Sacred Earth Coalition, Sarawak Indigenous Peoples Alliance (Malaysia, Sarawak, Kelabit), Shoal Lake Ojibway First Nation, Tlahtokan Tzkalotl, Top End Aboriginal Coalition, Treaty Six Chiefs, Union de Mujeres de San Antonio Youdeje, We Kintun Mapuche, Western Shoshone, and Xavante.

(b) Other organizations and groups

Aboriginal Law Centre, Ambedkor Centre for Justice and Peace Inc., Association de Soutien aux Nations Amerindiennes, Autofocus-Videowerkstatt Berlin, Big Mountain Aktionsgruppe, Bonded Labour Liberation Front, Centre d'Information sur les Peuples Indiens, Centre of Concern for Child Labour (India), Centro Cultural "Marka's Loyku", Cinq Cents Ans de Resistance, Diffusion Inti, Federation of Free African Trade Unions of Azania (South Africa), Foundation 12 Oktober Manifest, Freunde der Naturvoelker, Gerakan Revolutioner Rajat Nunusaka (Maluku), Gherush 92, Homeland Mission 1950 for the South Moluccas, Human Rights Fund for Indigenous Peoples, Incomindios Schweiz, International Society for Ethnobiology (Brazil), International Scholars for Indigenous Americans (ISIA), Kwia Group Indigenous Peoples, Mandala - Piaroa (Venezuela), Mondial-Contact, Naturbefreiungsarmee (Germany),

Nord-Sud-21, Papuan Peoples Foundation, Pro-Hawaiian Sovereignty Working Group, Shimin Gaikou Centre, Society for Threatened Peoples (Germany), Temoust, Traditions pour Demain, Vermont Empowerment Project, West Papuan Peoples Front, World Uranium Hearing, and Work Group for Indigenous Peoples (Netherlands).

13. In addition to the above-mentioned participants, 117 individual scholars, experts on human rights and human rights activists and observers attended the meetings.

Election of officers

14. At its first meeting on 22 July 1991, the Working Group re-elected by acclamation Ms. Erica-Irene A. Daes as Chairperson/Rapporteur, for the seventh time.

Organization of work

15. At its first meeting, the Working Group considered and adopted the provisional agenda, contained in document E/CN.4/Sub.2/AC.4/1991/L.1.

16. The Working Group held 18 public meetings from 22 July to 2 August 1991. The Working Group decided to devote the 2nd to 7th as well as the 10th meetings to item 4 on standard-setting activities, seven meetings to item 5 on review of developments, two plenary meetings to item 6 concerning on-going work by the Special Rapporteur of the Sub-Commission on his study of treaties, agreements and other constructive arrangements between States and indigenous populations, and one plenary meeting to item 7 on other matters. In accordance with established practice, the Working Group continued to meet in private during the subsequent session of the Sub-Commission for the purpose of finalizing this report and adopting the decisions and recommendations contained in annex I.

Documentation

17. The following documents were made available to the Working Group:

Provisional agenda (E/CN.4/Sub.2/AC.4/1991/L.1)

Information received from the Governments of Colombia, Finland and Mexico (E/CN.4/Sub.2/AC.4/1991/1, and E/CN.4/Sub.2/AC.4/1991/4);

Information received from the United Nations organs, specialized agencies and other intergovernmental organizations: Centre on Transnational Corporations, International Labour Office, the United Nations Conference on Environment and Development (E/CN.4/Sub.2/AC.4/1991/2 and Add.1, E/CN.4/Sub.2/AC.4/1991/6);

Information received from non-governmental organizations: International Work Group for Indigenous Affairs, Movement Tupay Katari and Socialist International Women (E/CN.4/Sub.2/AC.4/1991/5 and Add.1);

Draft preambular and operative paragraphs of the declaration on the rights of indigenous peoples as submitted by the members of the Working Group (E/CN.4/Sub.2/AC.4/1991/CRP.1, CRP.2 and CRP.4);

Convention of the 26 of the Association of Small Peoples of the Northern Soviet Union (E/CN.4/Sub.2/AC.4/1991/CRP.3);

Report of the United Nations Centre on Transnational Corporations on transnational investments and operations on the lands of indigenous peoples (E/CN.4/Sub.2/AC.4/1991/Misc.1);

Preliminary report on treaties, agreements and other constructive arrangements between States and indigenous populations submitted by the Special Rapporteur, Mr. Miguel Alfonso Martínez (E/CN.4/Sub.2/AC.4/1991/Misc.2);

Working paper on the question of the ownership and control of the cultural property of indigenous populations, prepared by the Chairperson/Rapporteur, Ms. Erica-Irene Daes (E/CN.4/Sub.2/1991/34);

Future sessions of the Working Group on Indigenous Populations: Note by the Secretary-General (E/CN.4/Sub.2/1991/35);

Draft declaration on the rights of indigenous peoples: Working paper submitted by the Chairperson/Rapporteur, Ms. Erica-Irene Daes pursuant to Sub-Commission resolution 1990/26 (E/CN.4/Sub.2/1991/36);

Report of the Secretary-General (E/CN.4/Sub.2/1991/37);

Further suggestions for United Nations activities for the International Year for the World's Indigenous People: Second working paper submitted by Mr. Asbjørn Eide and Ms. Christy Mbonu (E/CN.4/Sub.2/1991/39);

Report of the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States (E/CN.4/1989/22);

Working paper on possible United Nations activities for an International Year for Indigenous Rights submitted by Mr. Asbjørn Eide and Ms. Christy Mbonu (E/CN.4/Sub.2/1990/39);

Report of the Working Group on Indigenous Populations on its eighth session (E/CN.4/Sub.2/1990/42);

Fact Sheet No.9 entitled The Rights of Indigenous Peoples, published by the United Nations Centre for Human Rights, Geneva, May 1990.

Adoption of the report

18. The Working Group, on 15 August 1991, unanimously adopted the present report.

I. GENERAL DEBATE

19. The Chief of the Legislation and Prevention of Discrimination Branch of the Centre for Human Rights delivered an opening statement on behalf of the Under-Secretary-General for Human Rights, in which he explained the mandate of the Working Group, highlighted certain items on the provisional agenda and invited the Working Group to elect its Chairman/Rapporteur.

20. The candidacy of Ms. Erica-Irene A. Daes for Chairperson/Rapporteur of the Working Group was proposed by Mr. D. Türk and seconded by Mr. R. Hatano. Ms. Daes was elected by acclamation Chairperson/Rapporteur of the Working Group for the seventh time.

21. Following her re-election, Ms. Daes invited the Working Group to adopt the provisional agenda, contained in document E/CN.4/Sub.2/AC.4/1991/L.1. The provisional agenda was adopted by consensus.

22. In her introductory statement, Ms. Daes greeted the representatives of all Governments, intergovernmental and non-governmental organizations, indigenous peoples, nations and organizations and other parties and individuals attending the Working Group. She then outlined the organization of the work of the session, drawing attention to a number of issues on the agenda. In particular, she stressed the importance of standard-setting and her wish to make significant progress during the ninth session of the Working Group. The Chairperson/Rapporteur also referred to General Assembly resolution 45/164 of 18 December 1990 proclaiming 1993 the International Year for the World's Indigenous People. She said the Year provided an opportunity to raise awareness of indigenous peoples' concerns and mobilize the United Nations system to undertake activities on their behalf. She also referred to her study on the ownership and control of the cultural property of indigenous peoples and stated that her paper was aimed at complementing the relevant work of other organizations, in particular of UNESCO.

23. With regard to the United Nations Voluntary Fund for Indigenous Populations, Ms. Daes noted that this year the Fund had enabled 31 indigenous people, representing 28 indigenous organizations from 19 countries, to attend the meetings of the Working Group and expressed her gratitude to all the donors who had made this possible. She also mentioned the report of the United Nations Centre on Transnational Corporations on the operations of transnational corporations on the lands of indigenous peoples.

24. She noted the on-going work of the Special Rapporteur, Mr. M. Alfonso Martínez, on treaties, agreements and other constructive arrangements between States and indigenous peoples and drew attention to his preliminary report contained in document E/CN.4/Sub.2/AC.4/1991/Misc.2. She also welcomed the forthcoming seminar on indigenous self-government to be held in September 1991 in Greenland and referred to the technical meeting on indigenous practices on sustainable development due to be held in early 1992.

25. Ms. Daes mentioned her interesting and very important visits on behalf of the Working Group to indigenous peoples in Brazil and Japan. She said, inter alia, that she was accompanied in her mission to Brazil by the Chief of the Human Rights Office in New York, Ms. Elsa Stamatopoulou-Robbins, and in

her visit to Japan by the member of the Working Group Prof. R. Hatano and the former Secretary of the Working Group, Mr. G. Alfredsson. She expressed her gratitude to the Governments of Brazil and Japan and the indigenous peoples, in particular to the Ainu people in Japan for their hospitality and assistance extended to her during the visits. Finally, Ms. Daes expressed the hope that this session of the Working Group would be a productive and successful one, benefiting from cooperation and constructive dialogue.

26. Prior to and during the Working Group's session, the Secretariat received a considerable volume of reports, studies and other written materials of governmental, non-goverrmental and indigenous origin. This information was made available to the members of the Working Group. It was stated by members of the Group that the information received was of great value to their work, especially with regard to the Group's standard-setting activities.

27. The representative of the observer Government of New Zealand expressed the hope that the Chairperson/Rapporteur, Ms. Daes, would accept an invitation to visit his country. Ms. Daes expressed her thanks for the invitation to the Government of New Zealand and stated that she was looking forward to accepting this invitation in early 1992.

28. Mr. Robert Tickner, the Minister for Aboriginal Affairs of Australia, addressed and attended the meetings of the Working Group during its ninth session. The Chairperson/Rapporteur expressed her gratitude to the Minister for his active participation and positive contribution to the work of the Working Group.

29. Ms. E.A. Gaer, member of the Supreme Soviet of the Union of Soviet Socialist Republics and Chairperson of the Supreme Soviet's Subcommission on the Problems of the Small Peoples of the Union of Soviet Socialist Republics, addressed the Working Group during its ninth session. The Chairperson/ Rapporteur welcomed representatives of the Government and indigenous peoples of the Soviet Union and thanked Ms. Gaer for her valuable contribution to the work of the Working Group.

30. In her closing statement the Chairperson/Rapporteur noted that the Working Group had made significant progress in its standard-setting activities, substantially revising the preambular and first 18 operative paragraphs. She underlined that the draft declaration on the rights of indigenous peoples, as agreed upon by the members of the Working Group and the participants at its first reading will be submitted to Governments, intergovernmental and non-governmental organizations and indigenous peoples' organizations requesting their ad hoc comments and amendments. She looked forward to an equally fruitful session in 1992 which she remarked was a particularly important year for indigenous peoples. She expressed her thanks to her Working Group members, all participants in the session and the Secretariat for their work. Finally, Ms. Daes expressed her gratitude to the International Service for Human Rights and the Indigenous Centre for Documentation, Research and Information (DOCIP) for the technical secretariat services they had provided to indigenous representatives.

31. The opening and closing statements of the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, are reproduced in annex IV.

II. EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS PEOPLES

32. At the 1st meeting, on 22 July 1991, the Chairperson/Rapporteur of the Working Group, Ms. Daes, indicated that the standard-setting activities would be the major task of the session and invited all the participants to work together closely and constructively with the main objective of elaborating the draft declaration.

33. The Chairperson/Rapporteur had prepared a revised working paper (E/CN.4/Sub.2/1991/36) containing her proposed text of the draft declaration on the rights of indigenous peoples, the draft proposals by the three informal drafting groups established during the eighth session, as well as suggested revisions by Governments, international organizations, indigenous organizations and other interested parties.

34. At the 2nd meeting, on 23 July 1991, the Chairperson/Rapporteur proposed that the Working Group spend the rest of the week discussing her proposed text, and suggested revisions thereto, on the basis of which the members of the Working Group would elaborate a new text. She indicated that observers would be able to make preliminary comments on the new draft at this session and that this text would be transmitted to Governments, international organizations, indigenous organizations and other interested parties for more detailed consideration and commentary.

35. The Working Group, at the suggestion of the Chairperson/Rapporteur, spent the first week of the session in plenary discussing each provision of the proposed text, up to and including draft operative paragraph 17 bis.

General comments

36. Prior to the discussion of specific provisions, a number of general statements were made on the draft declaration as a whole.

37. The observer for New Zealand stated that the Working Group was now in a position to make substantial progress and emphasized a number of general points regarding the draft declaration. He mentioned General Assembly resolution 41/120 which invites Member States and United Nations bodies that are elaborating new international instruments to make them consistent with existing international standards. He also underscored the necessity for the draft declaration to be sufficiently precise for it to be easily understood and effectively implemented.

38. The representative of the observer Government of Norway reaffirmed her country's commitment to the drafting process being carried out by the Working Group. She also referred to General Assembly resolution 41/120 and the need to take its recommendations into account in drafting the declaration. She also highlighted the importance of the International Year for the World's Indigenous People.

39. The observer for Brazil stated that his Government approached the drafting of the declaration on the rights of indigenous peoples in a positive manner. He mentioned Commission on Human Rights resolution 1990/62 which

stressed that international standards must be developed on the basis of the diverse realities of indigenous peoples in all parts of the world. He expressed his delegation's hope that the draft declaration would soon be adopted by consensus without the need for unnecessary negotiations or reformulations. He drew attention to the positive aspects of the existing draft, including the protection of the cultural identity and economic structures of indigenous communities, but cautioned against the adoption of texts which are ambiguous or politically unacceptable to Governments. He thanked on behalf of his Government the Chairperson/Rapporteur, Ms. Daes, for her visit to Brazil.

40. A representative of the Ainu people expressed her people's appreciation to the international community for its attempts to abolish oppression of indigenous peoples. She thanked warmly Ms. Daes for her fact-finding visit to Japan and stated that her visit opened up a new page in the history of the Ainu people. She furthermore expressed the hope that the draft declaration would reflect the wishes and aspirations of all indigenous peoples and be adopted as soon as possible.

41. The representative of the International Labour Office made a general statement on the standard-setting activities of the Working Group. He reiterated the need for new international instruments in this field to be compatible with those already in existence. He, however, indicated that since the Working Group is drafting a declaration it is in a position to produce a text which would not only take into account accepted international standards, but also reflect the aspirations of indigenous peoples. Finally, he advocated that the term "indigenous peoples" used in the declaration embrace tribal peoples and other minorities who do not have a claim to historical precedence in the area.

42. The representative of the Grand Council of the Crees of Quebec also made a general statement on standard-setting. He suggested, inter alia, that the present drafting process take into account the results of the informal drafting groups set up at the eighth session of the Working Group, as well as the results of the Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States. He stated that the inalienable rights of indigenous peoples could not be negotiated or bargained away. He reminded the Working Group that the International Labour Office felt that the consideration of political rights was beyond its mandate and more appropriate for consideration by the Economic and Social Council. He therefore urged the Working Group to take these rights into account in preparing the draft declaration.

43. The representative of the International Organization of Indigenous Resource Development expressed the desire for a declaration which would explicitly recognize indigenous peoples as "peoples", provide practical remedies for on-going problems without compromising existing rights.

44. The representative of the Indian Council of South America stated that the draft declaration should be universal in its scope and that States participating in the work of the Working Group should use their political skills to assist in finding universally acceptable provisions.

45. A representative of the Mohawk Nation stressed that early treaties between indigenous peoples and Europeans were based on agreements among equals and that this notion should be incorporated in the draft declaration.

46. A number of observers at the Working Group emphasized the need for the draft declaration to be both consistent within itself, especially regarding terminology and substance, and consistent with existing international human rights instruments.

Comments on the draft declaration

47. Introducing document E/CN.4/Sub.2/1991/36, the Chairperson/Rapporteur reiterated her appeal to all participants to be as brief as possible when proposing concrete amendments.

48. After a general debate on the draft declaration, the Working Group proceeded with a further elaboration of the provisions and a first reading of the declaration article by article. Participants were invited to make amendments, revisions and suggestions to each draft article under consideration. This exercise was extremely difficult, taking into consideration the great number of participants and their different legal backgrounds.

49. During the discussion of specific provisions, certain issues were mentioned as being of particular importance. Several non-governmental representatives stated that the draft declaration should reflect the unqualified right of indigenous peoples to self-determination. However, some governmental and other non-governmental observers indicated that it may be necessary to qualify at least the application of the right in order to make the text acceptable to Governments which would have to implement it. Some Governments expressed opposition to the inclusion of a reference to self-determination.

50. The culture of indigenous peoples was also emphasized as being in need of special protection within the draft declaration. It was suggested by many that the draft should express a clear prohibition of any attempt to undermine the cultural identity of indigenous peoples, as well as provide that indigenous peoples control all manifestations of their cultures.

51. It was suggested by many observers at the Working Group that indigenous peoples are entitled to the recovery, restoration, restitution and/or adequate compensation for their lands and resources which have been taken without their consent and that this right be adequately expressed in the draft declaration. The question of control over the occupation and/or use of their lands and resources was highlighted as being of special concern to indigenous peoples. Indigenous peoples particularly sought to exercise control over the use of their lands and resources for military purposes, the dumping of toxic waste and developmental and other projects which affect them. In this connection, the traditional role of indigenous peoples as custodians of the environment was brought to the attention of the Working Group.

52. On the basis of the foregoing discussion and the amendments and suggestions made by the participants, the Chairperson/Rapporteur proposed that

the members of the Working Group should prepare a revised version of the preamble and first three parts of the draft declaration. The revised text prepared by the members (see annex II) was distributed as conference papers, the preamble in E/CN.4/Sub.2/AC.4/1991/CRP.1, Parts I and II in E/CN.4/Sub.2/AC.4/1991/CRP.2 and Part III in E/CN.4/Sub.2/AC.4/1991/CRP.4.

53. Preliminary comments on the new text were made by governmental and non-governmental observers. In their comments, some observers at the Working Group welcomed the new text as providing a measured balance between the aspirations of indigenous peoples and the interests of Governments.

54. Although there was some support in the meeting for the new formulation of the right to self-determination, a number of observers expressed grave concern that the present text represented a retreat from the first revised text which had been submitted by the Chairperson/Rapporteur in 1989. It was suggested that the Working Group should consider adopting a formulation similar to that found in the first article common to the International Covenants on Human Rights.

55. It was regretted by some that the new draft did not contain any reference to the right to development or treaty rights of indigenous peoples. It was, however, stated by others that the draft could only be critically assessed when there was an opportunity to consider it in its entirety.

56. Throughout the course of the debate on standard-setting, statements were made on the procedures to be followed in the drafting process of the Working Group. Some representatives of indigenous peoples and a few observer Governments were of the opinion that due to the significance of 1993 as the International Year for the World's Indigenous People, a concerted effort be made to adopt the draft declaration in that year. Furthermore, it was suggested that the first and second readings of the draft declaration could be completed by the Working Group in 1992. Other participants felt that it may be detrimental to the quality of the draft declaration to rush the drafting process merely for symbolic reasons. It was felt that the present draft could still benefit from the substantive input of indigenous peoples, which might no longer be possible once the draft left the Working Group. One observer Government proposed that efforts should be made to ensure continuing indigenous input, for example by scheduling future consideration by a commission working group immediately prior to session of the Working Group on Indigenous Populations.

57. The Chairperson/Rapporteur reiterated that this next text would be transmitted to Governments, international organizations, indigenous organizations and other interested parties for more detailed consideration and commentary immediately after the next session of the Commission on Human Rights.

III. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES

58. In her introductory statement on this item the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, welcomed all the participants and invited the observers of both Governments and indigenous peoples to share with the members of the Working Group the present situation in their countries. She requested all observers to speak about recent new developments and to refrain from making allegations about particular situations since the Working Group was not a forum for complaints. She also stated that the members of the Working Group were aware of the history of indigenous peoples and, taking into account the great number of participants and the time available, it would be advisable to avoid making reference to events and facts related to indigenous peoples' history. She pointed out that every participant should be given the opportunity to express his or her views under this important item.

59. Many statements were presented to the Working Group, bringing to its attention such issues as the vulnerable position of indigenous women and children; the adverse consequences of discriminatory treatment, environmental problems and national development projects; the violations of political and civil rights; cultural property; invalidation of treaty rights; transmigration; neglect of customary indigenous juridical systems; depletion of natural resources and other environmental concerns; rights to self-determination, autonomy and self-management; lack of access to medical and educational facilities; high mortality rates and unemployment.

60. Many of the Governments reported significant progress in their countries in connection with the protection and observance of the basic rights and fundamental freedoms of indigenous peoples. Several Governments reported that their countries had experienced political changes and indigenous peoples have benefited from the new constitutional reforms and enactment of legislation. Indigenous representatives participated in the drafting process or were consulted. As some indigenous representatives stated, even at this stage, new laws are being proposed or have been adopted which recognize the right to self-determination of indigenous peoples and their right to land, acknowledge the jurisdiction of indigenous peoples in their own territories, suggest mechanisms for dealing with the settlement of land claims, and recognize the right to education and health care.

61. In one State the president has requested nationals to listen and learn from the indigenous peoples who have always respected and lived in harmony with nature and who have pursued the type of development that his country now wishes to follow. In another country, a process of reconciliation with the indigenous people has been initiated, which is endorsed by a broad spectrum of society and with qualified support by the indigenous people themselves. This reconciliation aims at transforming relations between indigenous and non-indigenous peoples through, inter alia, an extensive public awareness and education campaign. An indigenous representative from the same country said that the reconciliation process must result in a treaty between the indigenous people and the government of the country for the process to have any credibility.

62. Many government observers expressed concern about the lack of progress in the fields of education and health, some even noted a deterioration in conditions. One country has embarked upon a national indigenous health strategy to address the urgent issue of poor public health caused by inadequate drinking water, sewerage and housing. In another country a commission has been established to examine the economic, social and cultural rights of its indigenous people whose living conditions are worse than those of non-indigenous communities elsewhere. The Government is committed to ameliorating these conditions by improving the housing policy, extending child and family services in particular areas of the country and providing clean water and sewerage systems on reserves.

63. Among the indigenous observers there was widespread concern for the poor health of their people. There were numerous reports of malnutrition, high infant mortality, extensive epidemics, and lack of basic food. In one country it was reported by many indigenous non-governmental organizations that 90 per cent of all deaths of one indigenous group, the Yanomami, was caused by malaria which was brought into the area by outside gold miners. Also, it was stated that as a result of privatization of State services, health care is becoming less available to indigenous people. The deleterious health situation cannot be separated from the economic conditions of high unemployment and poverty in which most indigenous peoples live.

64. There were various reports by indigenous representatives on how their Governments try to push their indigenous peoples into the mainstream economy. In the name of modernization indigenous peoples have been forced to take up farming instead of their traditional pastoral, hunting and gathering traditions. In the name of progress, traditional lands have been taken away from them with disastrous effects, sometimes leading to decline in the traditional indigenous economy, famine and mass suffering of many people. These Governments foster national unity and build nation States, but obliterate the cultural diversity of their peoples, it was claimed.

65. There were also reports from indigenous peoples about national development projects which they consider unsustainable. Indigenous people claim they are not consulted at the planning phase. Moreover, certain development projects cause deforestation, flooding of traditional lands, destruction of sacred sites, disruption of economic activities such as fishing or hunting, forced relocation and displacement, which lead to general misery, mental anguish, alcoholism, prostitution and high suicide rates in particular among young indigenous peoples.

66. Some indigenous representatives spoke about the issue of tourism which in its worst examples, totally disrupts the traditional economies of indigenous peoples. Game reserves which were carved out of larger indigenous and wildlife ecosystems have been created for tourists. Moreover, the indigenous people are denied the right to participate in the management of these reserves and are thus excluded from sharing the earnings from these resources.

67. One government observer stated that in his country the Government had recently officially stated that its indigenous peoples are the only "autochtonous" people of his country. Indigenous affairs can only be discussed by the national parliament in the presence of the indigenous

people. In addition, a law will come into force for the use of the indigenous language in relations with local and regional authorities. A similar experience was reported by another Government representative. In this country, the administration in areas with a high indigenous population are obliged to use the indigenous language if requested. Also, indigenous people are allowed to use their own language in court, hospitals and in church services. All these rights derive from the constitution which stipulates that it is the responsibility of the State to create conditions which enable indigenous peoples to preserve and develop their languages, culture and way of life.

68. In another country where the Government recently changed, the president of the State paid a visit to indigenous communities and recommended, inter alia, that their cultural expression and identity should be preserved and protected. One government observer stated that his Government had spent a large sum of money on the preservation and popularization of indigenous culture.

69. During a recent meeting of Heads of State in Guadalajara, Mexico, a declaration was adopted in which the contribution of the indigenous peoples to the development and plurality of their cultures was acknowledged and a commitment to their economic and social welfare was made, and an obligation to respect indigenous rights and cultural identity was confirmed.

70. One government observer made reference to the new constitution that was recently adopted in her country. In this constitution it is stipulated that indigenous authorities have the right to exercise juridical functions in their own territories in conformity with their customary laws. Indigenous representatives of another country stated that they are still seeking recognition by their non-indigenous Government of the value, legitimacy and right to existence of their customary indigenous justice system. Indigenous peoples find it difficult to understand and cope with a justice system which emphasizes punishment rather than rehabilitation and the restoration of proper relationships between peoples.

71. One indigenous non-governmental organization has requested that national funds should be released to establish museums that can display indigenous history and artefacts. Another non-governmental organization expressed concern about a proposal by a national institute of anthropology to create an archaeological zone in an area where traditional ceremonies are held annually.

72. There were many reports on the lack of proper education for indigenous peoples. Whereas in most of the cases there is a problem at the secondary or intermediate level, there are also reports that in some areas no primary schools are available for indigenous children. One indigenous observer reported that in his country, which had recently become a democracy, a programme of scholarships for indigenous university students had been launched by the Ministry of Education, which was very much appreciated by the indigenous communities. Government observers of two countries stated that recently an Act of Parliament had been amended to strengthen the right to education in the indigenous language. Another government observer stated that in his country there would be a sharper focus on education, training, health

and economic development for indigenous peoples to ensure access to the existing mainstream institutions. To this end a special indigenous ministry will be established by January 1992.

73. There were a number of statements by indigenous observers about the right to self-determination, autonomy, self-management and recognition of their peoples as indigenous peoples. One indigenous people have declared their State independent, following a complete blockade of their island by the central government. The indigenous representative claimed that the blockade has had catastrophic results for its population. Already 3,000 people have died because of the lack of basic medical supplies, he alleged.

74. There was discussion of one country where there is an ongoing debate about constitutional reform, the role of indigenous people in this reform and issues of interest to them such as constitutional recognition of self-government. Some indigenous people raised concerns about their continuing constitutional and treaty rights as well as their rights of self-determination in the event that a part of the country decides to secede. The observer Government representative outlined ongoing efforts to deal with the constitutional concerns of all people of the country and measures taken to ensure that indigenous people are part of that debate.

75. Many indigenous representatives reiterated their opinion and arguments that the preservation of the life and cultures of indigenous peoples was indissolubly linked to their lands and natural resources. In this respect it was said that land claims continue to be settled in various countries. One country had taken initiatives to accelerate the settlement of claims and aims to have settled 500 claims by the turn of the century. A representative of an observer Government stated that his country also aimed to deal speedily and fairly with outstanding grievances. A number of land claims were currently under discussion and negotiation between indigenous people and the Government.

76. Some indigenous representatives expressed their doubts that the claims for land in their countries would be settled. One indigenous representative said that he believed that although his country is considering ratifying ILO Convention 109, it will not guarantee that at a national level these rights will be adhered to.

77. One government observer mentioned that his Government has still not decided whether indigenous people can claim a right to the territories that were traditionally occupied by them. This is the reason why his Government has still not been able to ratify ILO Convention 169 of 1989. Another observer, representing a Home Rule Government, stated that her Government had been granted the right of ownership and control over land and territories excluding subsurface resources. The latter can only be exploited by mutual agreement between the central and the Home Rule Government.

78. In some countries demarcations of indigenous territories are planned or are taking place. In one particular case it is hoped that the demarcation of 94,000 km^2 of indigenous territory and the adoption of other important measures, can prevent the extinction of a particularly vulnerable indigenous people.

79. Many of the indigenous non-governmental organizations drew the attention of the Working Group to the continuing threats to the environment. Nuclear and other toxic waste continue to be dumped on the territories of indigenous populations. One Government is still preparing a hydroelectric project which could be environmentally damaging. The representative stated that a similar project 20 years earlier had caused environmental pollution. The representative of another observer Government stated that his Government was preparing a hydro-electric project, which could be environmentally damaging, and therefore government studies of environmmental and social impacts were being conducted. A number of indigenous representatives expressed their appreciation to the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, for addressing the Preparatory Committee for the World Conference on Environment and Development and presenting the needs, problems and aspirations of indigenous peoples, who consider the protection of the environment the main factor for the survival of contemporary humankind.

80. Several indigenous peoples drew attention to the growing racism towards them. In one country a commission has investigated the deaths of indigenous peoples in custody, the number of which has increased in recent years. One indigenous non-governmental organization expressed concern that the report of the commission did not contain recommendations on compensation to families affected by a death in custody or on the prosecution of responsible officials. Another commission in the same country had recently released a report on racist violence. Most incidents that were reported involved aboriginal people and the perpertrators of the violence were, in many cases, said to be police officers.

81. One indigenous representative stated that his people were among the poorest in his country. Housing, health and education standards were inadequate and unemployment rates are as high as 80-90 per cent. This was stated to be a direct result of the dispossession of their traditional lands, which had undermined their way of life and economic institutions.

82. There was mention of the frequent use of indigenous child labour. Children work for practically nothing and their situation is similar to that of slaves. Many do not get a proper education. One indigenous representative stated that in his country children were forcibly taken away from their parents.

83. Children attending religious schools are used for cheap labour it was alleged by one indigenous organization. Another indigenous non-governmental organization expressed concern about the issue of child prostitution. Indigenous girls and young women are bought and sold as child prostitutes which, he said, was a recognized contemporary form of slavery. Another indigenous representative stated that under the pretext of adoption an increasing pattern of indigenous child trafficking had emerged.

84. Some indigenous representatives drew attention to the particularly critical situation of indigenous women. They have less access to education, are economically exploited, oppressed and marginalized. They are discriminated against, not only for being indigenous people but also for being women. Because they work mainly in the informal sector they are not protected by any form of law. There were also reports of forced sterilization of women.

85. Furthermore, there were frequent reports by indigenous organizations on arbitrary detentions, disappearances, summary executions, torture, states of emergency during which even the non-derogable human rights were violated. In one case churchgoers had been taken out from the church, detained, tortured, murdered and dumped from helicopters into the sea. There were also reports about military attacks on indigenous villages, including summary executions of innocent people and children. In one incident, women and nuns were raped by soldiers. Nearly all of them died because of their injuries. In some areas indigenous people are constantly harassed by the armed forces, and they have fled to neighbouring countries or into the jungle.

86. The observer of the International Labour Office informed the meeting that Convention 169 had now received two ratifications which implied that the Convention can now come into force in September 1991. He also stated that the first reports under this Convention will be received for examination by the International Labour Office Committee of Experts at its 1993 session. He expressed satisfaction that the International Labour Office and the United Nations tended to work more closely on a number of matters, and he wondered whether this could also be worked out for the supervision of international instruments on the issue of indigenous peoples.

87. The observer for the Organization of American States said that the Inter-American Commission is in the process of consulting indigenous peoples' organizations to prepare an inter-American legal instrument for the defence and promotion of the human rights of indigenous peoples. He drew the attention of the Working Group to a policy statement which was recently issued in the region his organization was working on, which dealt with the reaffirmation of Government-to-Government relations between Indian tribes and the federal government of that country.

88. Several participants informed the Working Group about the Conference on Security and Cooperation in Europe, due to be held in Moscow in September 1991, and suggested that under the agenda item "human dimensions", the question of indigenous peoples should be considered. They also suggested that the Chairperson/Rapporteur or other members of the Working Group should be invited to attend the relevant meetings of the above-mentioned Conference and to contribute to the consideration of the issues related to indigenous peoples.

Cultural property

89. Ms. Erica-Irene A. Daes, the Chairperson/Rapporteur, submitted her working paper (E/CN.4/Sub.2/1991/34) on the question of the ownership and control of the cultural property of indigenous peoples. She emphasized that the working paper was a response to the specific requests of past participants to the Working Group. It was prepared, keeping in mind the protection of the cultural property of indigenous people only and was not intended to duplicate the work carried out elsewhere, in particular by UNESCO. She drew attention to paragraph 4 of the report which contains the UNESCO definition of cultural property. She emphasized the importance of the study and referred to its

approach. Also, she drew the attention of the participants to the conclusions and recommendations which, among others, suggest that the study should be further elaborated.

90. A brief discussion about the working paper took place. Indigenous people present expressed their gratitude to the Chairperson/Rapporteur for her valuable work and indicated that they believed elaboration of a study would be of vital importance for indigenous peoples.

91. A member of the Working Group stressed the importance of this issue for indigenous peoples and emphasized the importance of international cooperation in the efforts to return cultural property to indigenous peoples. He further noted that consideration by the Working Group would be appropriate to expand the definition of cultural property to include spiritual objects and property. Finally, he urged that the development of international standards regarding cultural property for indigenous populations should seek a balance between the rights of indigenous peoples and consideration for the universal cultural heritage of humankind.

92. A number of specific comments were made regarding the issue of cultural property. A representative of one non-governmental organization noted with satisfaction that an agreement had been reached between the Hokkaido University Medical Department and the Ainu people to return the remains of 1,004 individuals to the Ainu people for proper memorial services. He pointed out that it was greatly appreciated that the Chairperson/Rapporteur and Mr. Hatano had visited this place and paid their respects to the memory of the Ainu people. The representative went on to state that similar projects of restitution of remains are being negotiated.

93. Some positive changes were reported concerning the restitution of cultural property. In one country, after a long campaign by indigenous people, the remains of over 1,000 of their ancestors were returned to them so that they could be buried with the proper ceremonies. In another country, an interim policy was adopted and indigenous peoples have been given the rights of ownership over skeletal remains as well as other burial artefacts and objects having religious and cultural significance, which are presently in the possession of museums or other research centres.

94. The Chairperson of the Aboriginal and Torres Straits Islander Commission in Australia also noted the efforts of indigenous people and the Government to return skeletal remains to indigenous ownership as well as recent legislation created in order to return and protect indigenous cultural property. An indigenous representative expressed deep concern that a centre set up by the Commission to house cultural property was still not controlled by its indigenous owners.

95. The representative of the Maori delegation indicated his belief that the issue of cultural property was extremely important to indigenous peoples and emphasized that it was an issue very closely related to that of intellectual property and the activities of transnational corporations on indigenous

territories. He stated that indigenous people must be given control over the transmission and protection of their past, a right crucial to cultural development.

96. Finally, a representative of an observer Government announced the passage of legislation in his country to protect by special measures the integrity of the indigenous heritage and noted that the legislation gives the Government broad powers to enter into agreements with indigenous people, and to set up programmes which develop the capabilities of indigenous persons to manage their own archaeological resources.

IV. STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS PEOPLES

97. Mr. Miguel Alfonso Martínez, the Special Rapporteur for the study on treaties, agreements and other constructive arrangements between States and indigenous peoples presented his preliminary report (E/CN.4/Sub.2/1991/33), pursuant to Sub-Commission resolution 1990/28. He began by an explanation of the mandate given him by Sub-Commission resolution 1990/28 of 31 August 1991. He explained that he had submitted a legislative history in order to illustrate the vast scope of the study implied by the mandate as well as the inherent difficulties and those encountered during the preliminary stages of the preparation of his report. He then proceeded to summarize both the practical difficulties encountered and the advances made in his research work and referred to other activities he had undertaken such as the two study trips and field research. He further discussed a number of conceptual and practical preliminary conclusions he had reached in order to advance in his work.

98. The Special Rapporteur emphasized the necessity of a forward-looking approach to the relationship between indigenous peoples and Governments. He also stressed the broad nature of the subject matter of the study and the importance of the cooperation of Governments and indigenous peoples and their organizations. Thus, he expressed his desire that Governments, intergovernmental organizations and indigenous peoples' organizations respond to the questionnaire included as annex VI of the report of the Working Group at its eighth session (E/CN.4/Sub.2/1990/42). He also requested the assistance of specialized research expertise as foreseen in the various relevant resolutions and decisions on this matter.

99. The Chairperson/Rapporteur expressed her thanks and appreciation to the Special Rapporteur for his report, as well as for his important introductory statement.

100. The representative of one indigenous organization emphasized the solemn, spiritual nature of treaties within their culture and the importance of this study to them.

101. Another representative of an indigenous people stated that he believed the treaty study was vital to the consideration of drafting a set of standards for indigenous peoples. He noted his long support for the treaty study in the face of opposition by Governments. He also expressed his concern that the work had not gone further. He hoped that the Special Rapporteur would visit his country to make use of the documentation his organization had prepared on this issue. He suggested that a treaty conference should be organized with indigenous and other legal experts. He suggested that papers be presented at the conference on the myriad aspects of treaties, and expressed his hope that the Special Rapporteur would be a key element in this process. Finally, he suggested the record of the treaty conference would represent a valuable contribution to the treaty study.

102. A member of the Working Group recalled the discussions and comments on the study and submitted a number of thoughts to the Special Rapporteur. He

indicated that he looked forward to a substantial discussion regarding the juridical scope of the study. He posed a number of questions to the Special Rapporteur related to the treaty-making capacities of the parties involved; the freedom of the treaty-making parties to make their contracts; the principles of clausula rebus sic stantibus and pacta sunt servanda as applied between States and indigenous peoples; the rules of interpretation in international law; the applicability of modern methods of conflict resolution in the context of treaties with indigenous peoples and the methods of termination of treaties.

103. Several participants welcomed the Special Rapporteur's report, acknowledged the extensive scope of the subject matter and emphasized the need for the Special Rapporteur to receive full support from the secretariat in order for him to advance in his work. Two representatives of observer Governments expressed dissatisfaction at the slow progress of the study. A number of representatives of indigenous organizations voiced their full support for the Special Rapporteur and stressed the very preliminary nature of the present report. One indigenous representative stated that the Special Rapporteur had visited his territory and indicated that his efforts had been fruitful and productive. In his closing remarks, the Special Rapporteur expressed his gratitude to all those who participated in the debate for their valuable contributions to his future work.

V. OTHER MATTERS

International Year for the World's Indigenous People

104. In its resolution 1990/29, the Sub-Commission requested Mr. Asbjorn Eide and Ms. Christy Mbonu to prepare a second working paper in connection with the International Year for the World's Indigenous People providing further suggestions for United Nations activities for the Year. The working paper contained in document E/CN.4/Sub.2/1991/39 was introduced by Ms. Mbonu at the 15th meeting of the Working Group.

105. Ms. Mbonu referred to General Assembly resolution 45/165 in which it proclaimed 1993 the International Year for the World Indigenous People. She said that the Year presented an opportunity for the United Nations to provide concrete support and assistance to indigenous peoples, especially with projects of self-development. She stressed the importance of indigenous participation in all planning and implementation phases of the Year and emphasized that indigenous peoples should be the direct beneficiaries.

106. Ms. Mbonu went on to suggest that the Centre for Human Rights, taking into account the comments and suggestions made by participants at the ninth session of the Working Group, the recommendations of the Commission on Human Rights at its forty-seventh session, resolution 1991/7 of the Executive Board of UNICEF and resolution 91/12 of the Governing Council of the United Nations Development Programme as well as other suggestions, should draft a programme of activities for the Year. She further expressed her hope that United Nations bodies and Governments would consult with indigenous organizations in the run-up to the Year. Ms. Mbonu stated that the Centre for Human Rights and the International Labour Office should be directly involved in the Year and that coordination at a high level would be necessary. Finally, she expressed the belief that the official opening ceremony should take place at the United Nations Headquarters in New York on 12 October 1992 as this date was of symbolic importance to many indigenous peoples.

107. The Chairperson/Rapporteur expressed her thanks and appreciation to Mr. A. Eide and Ms. Christy Mbonu for their comprehensive and useful working paper (E/CN.4/Sub.2/1991/39) and congratulated Ms. Mbonu for her introductory statement.

108. A number of indigenous organizations expressed their appreciation to the United Nations for its proclamation of an International Year. However, the Year, they stated should benefit from the full participation of indigenous peoples. A member of the Working Group said that he shared Ms. Mbonu's hope that the United Nations would coordinate their actions in favour of indigenous peoples. He added that he was encouraged by the fact that many United Nations agencies were now incorporating human rights considerations into their programmes. He also offered any assistance in future activities in connection with the Year.

Voluntary Fund for Indigenous Populations

109. The Chairman of the Board of Trustees of the Voluntary Fund for Indigenous Populations, Mr. Agosto Willemsen-Diaz, reported on the activities

of the Fund. He informed the Working Group that the Fund had assisted 31 indigenous people representing 28 indigenous organizations from 19 countries. He also thanked the Chairperson/Rapporteur for her personal concern and contribution made to the work and the scope of the Voluntary Fund and expressed his gratitude to the Governments and non-governmental organizations which had made contributions to the Fund.

110. In the course of the session the observer for Japan announced that his Government had made a substantial contribution to the Fund. The Aboriginal and Torres Straits Islander Commission had also contributed and the Shimin Gaikou Centre of Japan stated that they would be contributing to the Fund.

Meetings

111. In her opening statement the Chairperson/Rapporteur referred to the United Nations meeting of experts to review the experiences of countries in the operation of schemes of internal self-government for indigenous populations to be held in Nuuk, Greenland, from 24 to 28 September. The representative of the Greenland Home Rule Government provided further information about the meeting in her statement and expressed her hope that many indigenous peoples would attend. The Cree Regional Youth Council of Quebec also informed the Working Group about the First World Indigenous Youth Conference scheduled in July 1992 in Quebec City.

Other matters

112. The representative of the United Nations Centre on Transnational Corporations presented a report on transnational investments and operations in the lands of indigenous peoples as contained in document E/CN.4/Sub.2/AC.4/1991/Misc.1. He explained, inter alia, that the report was partly a larger study which would be continued during 1992. The focus of the future work would be on Asia and Africa and he expressed the hope that indigenous organizations would respond to the questionnaire submitted with the Working Group's report in 1990 and provide information about projects in their lands.

113. The Chairperson/Rapporteur expressed her thanks and appreciation to the representative of the United Nations Centre on Transnational Corporations for the very important and useful report presented to the Working Group and appealed to the indigenous organizations to reply to the aforementioned questionnaire as soon as possible. This would facilitate the elaboration of a relevant study of transnational investments and operations in the lands of indigenous peoples.

114. The Shimin Gaikou Centre of Japan informed the Working Group that from October 1991 it would set up a fund for the translation of United Nations human rights instruments into indigenous languages.

115. At the end of the proceedings, a large number of participants, including government observers and indigenous peoples' organizations, expressed gratitude to the Chairperson/Rapporteur for a harmonious and successful session.

Annex I

RECOMMENDATIONS

1. The Working Group recommends that its report, including the Preamble and Parts I, II and III of the draft universal declaration on the rights of indigenous peoples as they were amended and agreed upon by its members at first reading (annex IIA), together with the remaining operative paragraphs as revised by the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes (annex IIB), be submitted for written comments and suggestions to Governments, indigenous peoples, and intergovernmental and non-governmental organizations.

2. The Working Group also recommends that the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, be entrusted with the task of further elaborating the paragraphs of the draft universal declaration which were agreed upon by the members of the Working Group, taking into account the relevant written observations received in accordance with paragraph 1 above, in order to facilitate further progress on standard-setting at its tenth session.

3. At its tenth session, the Working Group will complete the first reading of the remaining parts of the universal declaration on the rights of indigenous peoples, and begin a second reading of the text of the declaration as a whole. In view of this, the Working Group recommends that its tenth session be allocated 10 working days and full language services.

4. The Working Group encourages the continuation and intensification of the constructive dialogue which has begun to develop at its sessions between indigenous peoples, the members of the Working Group, and Governments. The Working Group reiterates its conviction that such a dialogue, conducted in an atmosphere of good faith, good will, and trust, can be very helpful to ongoing United Nations efforts concerning all aspects of the recognition, promotion and protection of the rights of indigenous peoples.

5. In view of the richness and importance of the information provided to the Working Group each year by the representatives of indigenous peoples and Governments, and the potential value of stimulating a wider, year-round exchange of views, the Working Group decides to make its reports more widely available by reprinting them as sales items, and recommends to the Sub-Commission and Commission on Human Rights to consider requesting the necessary authority for this.

6. The Working Group believes that the effectiveness of its efforts to promote the rights of indigenous peoples in all parts of the world would be greatly enhanced by convening some of its future sessions in other regions. The Working Group accordingly expresses its appreciation to the Secretary-General for his note on the financial implications of convening one or more of its future meetings in Latin America or Asia (E/CN.4/Sub.2/1991/35). It recommends that its eleventh session (1993) be held in Latin America and its twelfth session (1994) be held in Asia, in order to facilitate indigenous participation from these regions, and to ensure widespread understanding of the draft declaration on the rights of indigenous peoples.

7. The Working Group commends indigenous peoples' organizations for their continuing efforts to exchange information and experiences among themselves at the regional and international levels and encourages their efforts to promote activities to this effect in ways they consider appropriate. In this connection the Working Group warmly welcomes the initiative taken by the Cree Regional Youth Council (of Quebec) in organizing the First World Indigenous Youth Conference in Quebec City, in July 1992. Accordingly, the Working Group recommends the Sub-Commission to request the organizers to make available the report at the tenth session of the Working Group and encourages States as well as indigenous peoples to give the Conference their full support and cooperation.

8. The Working Group appreciates the efforts made by indigenous peoples and Governments towards the constructive, equitable and peaceful resolution of conflicts. The Working Group believes that respect for human rights and the rule of law, and the establishment of an open public dialogue by all parties, is essential to such efforts, and recommends that the Sub-Commission continue to consider opportunities to provide its "good offices" in appropriate cases. The Working Group takes note of the suggestion made by the Navajo Nation and Hopi Tribe for support of ongoing mediation regarding the relocation of Navajo and Hopi families, consistent with Sub-Commission resolution 1990/34.

9. The Working Group expresses appreciation to the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, for her valuable working paper on the ownership and control of the cultural property of indigenous peoples (E/CN.4/Sub.2/1991/34). A number of participants stressed the significance of this issue to their survival as distinct peoples, and urged the Working Group to continue and expand the study. The Working Group accordingly recommends that the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, be entrusted with the preparation of a comprehensive study of this topic for completion in 1993, with a view to identifying ways of making existing international mechanisms for the protection of cultural property more accessible and effective for indigenous peoples. Preparation of this study should include consultations and collaboration with UNESCO, as far as possible, and should focus on the definition, and protection of indigenous ownership of cultural property under the laws and traditions of indigenous peoples, taking into account, inter alia, the above-mentioned working paper and other relevant written statements.

10. The Working Group would like to emphasize its potential as a catalyst and advocate to other parts of the United Nations system, to promote the rights and interests of indigenous peoples. In this regard the Working Group stresses the need for a forward-looking approach to relations between States and indigenous peoples which will contribute to a more just and stable relationship between them.

11. The Working Group recommends that the Centre for Human Rights enter into discussions with other parts of the United Nations system, particularly those organizations providing technical or developmental assistance to indigenous peoples, with a view to informing them of the activities regarding the promotion and protection of the rights of indigenous peoples, and of encouraging greater participation of indigenous peoples in the planning and implementation of projects affecting them.

12. The Working Group expresses its appreciation to the United Nations Centre on Transnational Corporations for its report (E/CN.4/Sub.2/1991/49), and encourages indigenous peoples to participate actively in this study in the future. Indigenous participation may be limited, in some countries, by indigenous peoples' lack of persons trained to collect the demographic and economic data required by UNCTC. The Working Group accordingly encourages UNCTC to seek budgetary and extrabudgetary resources to support development of a programme of technical assistance to indigenous peoples, in particular in the field of environmental monitoring.

13. With respect to the adverse impacts of development activities on the lives and cultures of indigenous peoples, the Working Group also notes with appreciation the working paper on population transfer and resettlement (E/CN.4/Sub.2/1991/47) prepared by Ms. Christy Mbonu, and it encourages the Sub-Commission to pursue the elaboration of international guidelines along the lines proposed by her working paper.

14. The Working Group also expresses its gratitude to the Special Rapporteur, Ms. Fatma Zohra Ksentini, for her preliminary report on human rights and the environment (E/CN.4/Sub.2/1991/8), in particular that part of her report which deals with indigenous peoples, and recommends that the Sub-Commission invite her to continue to reflect the knowledge and concerns of indigenous peoples in future reports on this question.

15. The Working Group renews its appeal to the World Intellectual Property Organization for cooperation and assistance in accordance with Sub-Commission resolution 1990/27 and recommends to the Sub-Commission to request the Secretary-General to prepare, for the guidance of the Working Group and indigenous peoples, a concise report on the extent to which indigenous peoples can take advantage of the existing international mechanisms for the protection of intellectual property.

16. The Working Group expresses appreciation to the Chairman and Member States of the Preparatory Committee of the United Nations Conference on Environment and Development for giving its Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, the opportunity to address the Preparatory Committee's second session, in Geneva. The Working Group recommends that its Chairperson/Rapporteur or other member of the Working Group provide updated information to the third and fourth session of the Preparatory Committee, in case they are invited by the Committee, as well as to the Conference itself in June 1992.

17. The Working Group expresses its deep appreciation to the Home Rule Government of Greenland for agreeing to host the United Nations meeting of experts on indigenous self-government at Nuuk in September 1991, and requests that the report be made available to the Working Group at its tenth session.

18. The Working Group recommends that future United Nations seminars and expert meetings on indigenous issues be convened in regions and countries where there are the greatest numbers of indigenous peoples.

19. The Working Group recommends to the Sub-Commission to appeal to Governments to consider the possibility of hosting the United Nations technical conference on environmentally sound and sustainable self-development

for indigenous peoples, approved by Economic and Social Council decision 1990/238, so that it can be organized no later than mid-1992 and further requests that the report be submitted to the United Nations Conference on Environment and Development as well as the Working Group at its tenth session.

20. The Working Group expresses its appreciation to the Special Rapporteur, Mr. Miguel Alfonso Martínez, for his preliminary report on treaties, agreements and other constructive arrangements between States and indigenous people. The Working Group also records its gratitude to the Governments and indigenous peoples' organizations which have responded to the questionnaire contained in its report on the eighth session and decides to reproduce the questionnaire as a separate annex to its report on its ninth session and to circulate it once again to Governments, intergovernmental organizations and indigenous peoples' organizations requesting them to submit information not later than 15 March 1992 so as to permit the Special Rapporteur to take their information into account in the progress report he will submit to the Working Group at the tenth session. The Working Group further requests that the Special Rapporteur be provided with the assistance envisaged under the relevant resolutions.

21. The Working Group welcomes the initiative of several indigenous organizations to organize a conference of indigenous experts on treaties in 1992 with the participation of the Special Rapporteur and expresses the hope that its proceedings, conclusions and recommendations will be made available to the Special Rapporteur as an important contribution to the study.

22. The Working Group welcomes the decision by the General Assembly, in its resolution 45/164, to proclaim 1993 as the International Year for the World's Indigenous People, and is prepared to assume a significant role in the planning and evaluation of the United Nations programme of activities. The Working Group recalls Economic and Social Council resolution 1988/35 of 27 May 1988, in which States are encouraged to ensure that educational and informational activities, including national celebrations, give an accurate interpretation of history, and do not perpetuate or justify theories of racial superiority or the subjugation of indigenous or other peoples.

23. The Working Group welcomes, in particular, Commission on Human Rights resolution 1991/57, UNDP Governing Council decision 91/12, and UNICEF Executive Board decision 1991/7, regarding the International Year for the World's Indigenous People, and expresses the hope that other United Nations bodies, organs and specialized agencies will adopt policies in the same spirit. In particular, the Working Group emphasizes the fundamental importance of participation by indigenous peoples in every aspect of decision-making concerning the Year, at the national, regional and international levels.

24. The Working Group expresses its appreciation to Mr. Asbjorn Eide and Ms. Christy Mbonu for their second working paper on the possible programme of activities for the International Year (E/CN.4/Sub.2/1991/39), as well as for the further ideas and updated information presented by Ms. Mbonu during its ninth session. The Working Group endorses the recommendations that the

General Assembly designate a United Nations coordinator for the Year and that the opening ceremonies for the Year be held at the General Assembly in New York on or about 12 October 1992.

25. The Working Group recommends that the Sub-Commission request the Secretary-General to assist Ms. Mbonu so that she can evaluate the International Year for the World's Indigenous Peoples.

26. The Working Group notes that the World Conference on Human Rights will take place during the International Year for the World's Indigenous People, and encourages the Preparatory Committee for the Conference to seek ways of reflecting this in the agenda and working methods of the Conference. It is the belief of the Working Group that the struggle of indigenous peoples to claim and exercise their rights over the past 20 years is an important case study for evaluating the United Nations human rights programme and its future directions and, moreover, that this case study should be presented to the Conference by indigenous peoples themselves.

27. The Working Group believes that an appropriate central theme for the International Year might be "Empowerment through partnership".

28. The Working Group expresses its gratitude to Governments, individuals, indigenous peoples and non-governmental organizations for contributions made to the United Nations Voluntary Fund for Indigenous Populations. In light of the pressing need to ensure the widest possible indigenous participation in the completion of the draft universal declaration on indigenous rights, the Working Group encourages continued and increased contributions to the Fund.

29. The Working Group reiterates its belief that the programme of advisory services in the field of human rights could play an important role in the recognition, promotion, protection and restoration of indigenous rights, by providing information and training directly to indigenous organizations and communities. The Working Group therefore appeals to Governments and non-governmental organizations to consider making special contributions to the Voluntary Fund for Advisory Services in the Field of Human Rights, with the aim of supporting projects of direct benefit to indigenous peoples.

30. The Working Group recommends that the regional training course on United Nations, human rights, and indigenous peoples be organized in Latin America in accordance with the Commission on Human Rights resolution 1991/57 as soon as possible.

31. The Working Group notes with appreciation the publication of copies of the Universal Declaration of Human Rights in Mikmaq by the United Nations Department of Public Information, and hopes the DPI will make efforts to develop a more comprehensive programme of translating and publishing basic human rights instruments into indigenous languages. The Working Group is committed to the principle that indigenous peoples have the right to learn about and teach their rights in languages they understand.

32. The Working Group has followed with interest the evolving work of the Conference on Security and Cooperation in Europe on the issue of minorities and notes that millions of indigenous people live in the territories of certain participating States. The Working Group believes it is important to continue to distinguish appropriately between indigenous peoples and minorities, and invites the above-mentioned States to consider the issue of the recognition and protection of the rights of indigenous peoples at the forthcoming conference in Moscow on the human dimension. In this regard, the Working Group recommends that its Chairperson/Rapporteur attend the aforesaid conference.

33. The Working Group decides to consider the questions, "Economic and social relations between indigenous peoples and States", "Ownership and control of the cultural property of indigenous peoples", and "International Year for the World's Indigenous People", as separate items of the agenda at its tenth session.

Annex II

Draft universal declaration on the rights of indigenous peoples

A. PREAMBULAR AND OPERATIVE PARAGRAPHS TO THE DRAFT DECLARATION AS SUBMITTED BY THE MEMBERS OF THE WORKING GROUP AT FIRST READING

1st Preambular Paragraph

Affirming that all indigenous peoples are free and equal in dignity and rights in accordance with international standards, while recognizing the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

2nd Preambular Paragraph

Considering that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

3rd Preambular Paragraph

Convinced that all doctrines, policies and practices of racial, religious, ethnic or cultural superiority are scientifically false, legally invalid, morally condemnable and socially unjust,

4th Preambular Paragraph

Concerned that indigenous peoples have often been deprived of their human rights and fundamental freedoms, resulting in the dispossession of lands, territories and resources, as well as in poverty and marginalization,

5th Preambular Paragraph

Welcoming the fact that indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

6th Preambular Paragraph

Recognizing the urgent need to promote and respect the rights and characteristics of indigenous peoples which stem from their history, philosophy, cultures, spiritual and other traditions, as well as from their political, economic and social structures, especially their rights to lands, territorities and resources,

7th Preambular Paragraph

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from adverse discrimination of any kind,

8th Preambular Paragraph

Endorsing efforts to consolidate and strengthen the societies, cultures and traditions of indigenous peoples, through their control over development affecting them or their lands, territories and resources,

9th Preambular Paragraph

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, understanding and friendly relations among all peoples of the world,

10th Preambular Paragraph

Emphasizing the importance of giving special attention to the rights and needs of indigenous women, youth and children,

11th Preambular Paragraph

Recognizing in particular that it is in the best interest of indigenous children for their family and community to retain shared responsibility for the upbringing of the children,

12th Preambular Paragraph

Believing that indigenous peoples have the right freely to determine their relationships with the States in which they live, in a spirit of coexistence with other citizens,

13th Preambular Paragraph

Noting that the International Covenants on Human Rights affirm the fundamental importance of the right to self-determination, as well as the right of all human beings to pursue their material, cultural and spiritual development in conditions of freedom and dignity,

14th Preambular Paragraph

Bearing in mind that nothing in this Declaration may be used as an excuse for denying to any people its right to self-determination,

15th Preambular Paragraph

Calling upon States to comply with and effectively implement all international instruments as they apply to indigenous peoples,

16th Preambular Paragraph

Solemnly proclaims the following Declaration of The Rights of Indigenous Peoples:

PART I

Operative paragraph 1

Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the States in which they live, in a spirit of coexistence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

Operative paragraph 2

Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of the United Nations and other international human rights instruments.

Operative paragraph 3

Indigenous peoples have the right to be free and equal to all other human beings and peoples in dignity and rights, and to be free from adverse distinction or discrimination of any kind based on their indigenous identity.

PART II

Operative paragraph 4

Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty and security of person.

Operative paragraph 5

Indigenous peoples have the collective and individual right to maintain and develop their distinct ethnic and cultural characteristics and identities, including the right to self-identification.

Operative paragraph 6

Indigenous peoples have the collective and individual right to be protected from cultural genocide, including the prevention of and redress for:

(a) any act which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;

(b) any form of forced assimilation or integration;

(c) dispossession of their lands, territories or resources;

(d) imposition of other cultures or ways of life; and

(e) any propaganda directed against them.

Operative paragraph 7

Indigenous peoples have the right to revive and practise their cultural identity and traditions, including the right to maintain, develop and protect the past, present and future manifestations of their cultures, such as archaeological and historical sites and structures, artifacts, designs, ceremonies, technology and works of art, as well as the right to the restitution of cultural, religious and spiritual property taken from them without their free and informed consent or in violation of their own laws.

Operative paragraph 8

Indigenous peoples have the right to manifest, practise and teach their own spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

Operative paragraph 9

Indigenous peoples have the right to revive, use, develop, promote and transmit to future generations their own languages, writing systems and literature, and to designate and maintain the original names of communities, places and persons. States shall take measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary, through the provision of interpretation or by other effective means.

Operative paragraph 10

Indigenous peoples have the right to all forms of education, including access to education in their own languages, and the right to establish and control their own educational systems and institutions. Resources shall be provided by the State for these purposes.

Operative paragraph 11

Indigenous peoples have the right to have the dignity and diversity of their cultures, histories, traditions and aspirations reflected in all forms of education and public information. States shall take effective measures to eliminate prejudices and to foster tolerance, understanding and good relations.

Operative paragraph 12

Indigenous peoples have the right to the use of and access to all forms of mass media in their own languages. States shall take effective measures to this end.

Operative paragraph 13

Indigenous peoples have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their own economic, social and cultural development, and for the enjoyment of the rights contained in this Declaration.

Operative paragraph (to be numbered)

Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or to the Declaration of Principles of International Law on Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations.

PART III

Operative paragraph 14

Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands, territories and resources, which include the total environment of the land, waters, air and sea, which they have traditionally occupied or otherwise used.

Operative paragraph 15

Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent any interference with or encroachment upon these rights.

Operative paragraph 16

Indigenous peoples have the right to the restitution or, to the extent this is not possible, to just and fair compensation for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall preferably take the form of lands and territories of quality, quantity and legal status at least equal to those which were lost.

Operative paragraph 17

Indigenous peoples have the right to the protection of their environment and productivity of their lands and territories, and the right to adequate assistance including international cooperation to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the storage or disposal of hazardous materials shall not take place in their lands and territories.

Operative paragraph 18

Indigenous peoples have the right to special measures for protection, as intellectual property, of their traditional cultural manifestations, such as literature, designs, visual and performing arts, cultigens, medicines and knowledge of the useful properties of fauna and flora.

Operative paragraph (to be numbered)

In no case may any of the indigenous peoples be deprived of their means of subsistence.

B. OPERATIVE PARAGRAPHS AS REVISED BY THE CHAIRPERSON/RAPPORTEUR PURSUANT TO SUB-COMMISSION RESOLUTION 1990/26

Draft operative paragraph 18

PART IV

"The right to maintain and develop within their areas of lands and other territories their traditional economic structures, institutions and ways of life, to be secure in the traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh- and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived;"

Draft operative paragraph 19

"The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities;"

Draft operative paragraph 20

"The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, and as far as possible to develop, plan and implement such programmes through their own institutions;"

Draft operative paragraph 21

PART V

"The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic, social and cultural life of the State and to have their specific character duly reflected in the legal system and in political and socio-economic and cultural institutions, including in particular proper regard to and recognition of indigenous laws and customs."

Draft operative paragraph 22

"The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their rights, life and destiny;"

"(b) The right of indigenous peoples to be involved, through appropriate procedures, determined in conjunction with them, in devising any laws or administrative measures that may affect them directly, and to obtain their free and informed consent through implementing such measures. States have the duty to guarantee the full exercise of these rights;"

Draft operative paragraph 23

"The collective right to autonomy in matters relating to their own internal and local affairs, including education, information, mass media, culture, religion, health, housing, social welfare, traditional and other economic and management activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions;"

Draft operative paragraph 24

"The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions according to their own procedures, and to determine the membership of the indigenous people concerned for these purposes; States have the duty, where the peoples concerned so desire, to recognize such institutions and their memberships through the legal systems and political institutions of the State;"

Draft operative paragraph 25

"The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms;"

Draft operative paragraph 26

"The right to maintain and develop traditional contacts, relations and cooperation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts;"

Draft operative paragraph 27

"The right to claim that States honour treaties and other agreements concluded with indigenous peoples, and to submit any disputes that may arise in this matter to competent national or international bodies;"

Draft operative paragraph 28

PART VI

"The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms;"

Draft operative paragraph 29

PART VII

"These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world;"

Draft operative paragraph 30

"Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein;"

Annex III

WORKING PAPER AND QUESTIONNAIRES SUBMITTED BY THE SPECIAL RAPPORTEUR OF THE SUB-COMMISSION, MR. MIGUEL ALFONSO MARTINEZ, ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS PEOPLES

1. Subsequent to both my appointment as Special Rapporteur by the Sub-Commission and the confirmation of this appointment by the Commission on Human Rights and the Economic and Social Council, I have proceeded with and made good progress on research of all aspects of the Study assigned to me.

2. In the course of this research work it has become abundantly clear, and increasingly so, that the scope of the study is particularly broad. The treaties, agreements and other arrangements in question number in the thousands; the legal nature and contents of these texts vary significantly; the use and application of these texts likewise vary within and between States; and the national and international legal issues concerning treaties, agreements and other constructive arrangements raise questions of great complexity on several scores, including conclusion, interpretation, application and possible termination of such instruments.

3. I am grateful to Governments, indigenous peoples and their organizations, academic institutions and individual scholars who have come forward and provided me with what is already a valuable source of materials concerning the topics brought up by the Study. Nevertheless, in order to obtain full information about all the various aspects, additional research and collection of texts and other reports and materials are essential.

4. For these reasons, I am enclosing with this brief Working Paper two questionnaires addressed respectively to Governments and indigenous peoples. It is my request that the Working Group annex them to its report and that the Secretariat distribute them as soon as possible by means of notes verbales and letters. The questionnaires reflect closely the issues and questions which have come up in my research so far and it is my sincere hope and expectation that all the parties concerned will provide me with their responses and points of view as soon as possible, preferably by the end of April 1991, so as to take into account their views in my preliminary report.

QUESTIONNAIRES PREPARED BY THE SPECIAL RAPPORTEUR FOR THE STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS

A. GOVERNMENT VERSION

PART I

Has your country, or a former colonial power with previous authority upon your country's present territory (if this was the situation), entered into any treaties, agreements or other types of formal or informal mutually agreed upon

instruments with indigenous peoples? Likewise, have indigenous peoples who currently live in the present territory of your country entered into any treaties, agreements or other types of informal instruments with other States?

(a) If your answer is no, please go to Part III.

(b) If your answer is yes, the Special Rapporteur would request all relevant materials and information with respect to the questions under Parts II and III.

PART II

1. Copies of treaties, agreements or other types of formal or informal mutually agreed upon instruments between indigenous peoples and States.

2. Other constructive arrangements constituting elements governing relations between indigenous peoples and States, in particular those consisting of mutual obligations or containing guarantees relating to indigenous rights (i.e. land, resources, traditional practices and beliefs, etc.).

3. Parties to the treaties, agreements or other constructive arrangements, including statistical data on the respective indigenous peoples.

4. Historical circumstances of the negotiation, conclusion, celebration, application, amendment, modification and/or termination of the treaties, agreements or other constructive arrangements.

(Please specify the nature of the instrument, explaining the circumstances leading to negotiations and the signing of the treaty; the powers and specific instructions to the negotiator representing the State concerning the conduct of the treaty negotiation and celebration; the existence of an internal law (of the State) regarding the format of treaty negotiations; the existence of national laws requiring the consent of the indigenous peoples for the validity of the said instrument; etc.)

5. The purpose of the treaties, agreements or other constructive arrangements (i.e. peace, boundary delimitation, friendship, cooperation, trade, etc.);

(The cause and object of the instrument; the position of the State in matters of land and resources within the treaty area; express or tacit language in the instrument implying the relinguishing of indigenous rights to lands and resources.)

6. The substantive contents of the treaties, agreements or other constructive arrangements.

7. The authoritative language(s) in which the treaties, agreements or other constructive arrangements were concluded.

(The existence of different language versions of the treaty, including indigenous languages; updating; in terms of language, of the treaty.)

8. Applicable rules of interpretation of the treaties, agreements or other constructive arrangements (of both their texts and connected legal instruments).

(In the case of reinterpretation: the possibility for indigenous peoples to hold the Government to the original provisions of the treaty; the existence of legal means for indigenous peoples to reject formally reinterpretation they disagree with; consultation with treaty peoples regarding changes proposed by the State; the existence, within present implementation machinery, of the requirement to consult with the indigenous party.)

9. Conflict resolution provisions of the treaties, agreements or other constructive arrangements.

(Settling of disputes in relation to treaty interpretation; the existence of mechanisms within the treaty provisions to resolve outstanding disputes.)

10. Methods of registration and publication of the treaties, agreements or other constructive arrangements.

11. Constitutional and legislative provisions on the conclusion of the treaties, agreements or other constructive arrangements, as well as the constitutional and legislative provisions on the application and termination of such instruments.

(The decision-making authority with regard to the implementation of the treaty provisions; the existence of a specific Government branch to deal exclusively with the treaties; right of veto for indigenous peoples on issues directly related to the treaty.)

12. The juridical status and official recognition by States and indigenous peoples of the treaties, agreements or other constructive arrangements.

13. Constitutional and other guarantees and legislative and administrative regulations based on the treaties, agreements or other constructive arrangements, or derived from the same.

14. Judicial or other types of decisions by higher and lower courts, or other organs with comparative authority, at the local, provincial/State and national levels, involving treaties, agreements or other constructive arrangements.

15. Practical consequences for all parties resulting from the implementation, or lack thereof, of the treaties, agreements or other constructive arrangements.

(Recognition, through provisions of the instruments and consequent practice, of indigenous legal systems.)

16. Ongoing or planned negotiations for the conclusion of new treaties, agreements or other constructive arrangements, as well as for the amendment or modification of existing ones.

17. Treaties, agreements or other constructive arrangements which have been terminated, abandoned or rendered obsolete by indigenous peoples or States, either unilaterally or bilaterally.

(The existence of administrative or legislative measures altering the nature of the treaty relationship, steps or measures taken to actually terminate the treaty.)

18. Bilateral or multilateral treaties between States establishing rights for and/or obligations of indigenous peoples.

PART III

19. What is your Government's position with respect to the principles and norms that govern the interpretation of treaties and other instruments?

20. Does your Government currently have authority to make treaties with indigenous peoples? How would it be exercised?

21. Does your Government currently have authority to make other kinds of agreements with indigenous peoples? With what objects, and by what procedure?

22. What measures has your Government undertaken, or intends to undertake, to resolve situations of conflict arising from treaty, or non-treaty relations, between your State and indigenous peoples?

23. Is there any process by which disputes regarding treaties could be settled by an independent body either within or outside the State?

24. What recommendation do you have for the Special Rapporteur with regard to the choice of existing or new international fora for the resolution of treaty or non-treaty issues between the State and indigenous peoples?

(For instance: the use of a mutually agreed upon, impartial third party, such as the International Court of Justice, to provide the necessary assistance to mediate or resolve important treaties and other instruments in question.)

25. Would you recommend that, in the process of treaty making and treaty application, States and indigenous peoples establish relations in political, cultural and economic spheres of interaction?

26. Does your Government have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?

27. Please provide any additional information you consider relevant.

B. INDIGENOUS PEOPLES/ORGANIZATIONS VERSION

PART I

Do you feel bound to honour any treaty, agreement or other constructive arrangements with the Government of the country in which you live, or with a colonial Government, or with any other European countries?

(a) If your answer is no, please go to Part III.

(b) If your answer is yes, the Special Rapporteur would request all relevant materials and information with respect to the questions under Parts II and III.

PART II

1. Copies of treaties, agreements or other types of formal or informal mutually agreed upon instruments between indigenous peoples and States.

2. Other constructive arrangements constituting elements governing relations between indigenous peoples and States, in particular those consisting of mutual obligations or containing guarantees relating to indigenous rights (i.e. land/or resources, traditional practices and beliefs, etc.).

3. Parties to the treaties, agreements or other constructive arrangements, including statistical data on the respective indigenous peoples.

4. Historical circumstances of the negotiation, conclusion, celebration, application, amendment, modification and/or termination of the treaties, agreements or other constructive arrangements.

(Please specify the nature of the instrument, explaining the circumstances leading to negotiations and the signing of the treaty; indigenous law regarding the format of the treaty negotiations; legal system used and the authority exercised by the indigenous peoples at the time of entering into the treaty (sovereignty and indigenous government); authority and legitimacy of those who signed the treaty on behalf of indigenous peoples; process of ratification practised by the indigenous peoples within or outside the indigenous legal system.)

5. The purpose of the treaties, agreements or other constructive arrangements (i.e. peace, boundary delimitation, friendship, cooperation, trade, etc.);

(The cause and object of the instrument; use of treaties as a pretext for legitimizing settlement, without any intention on the part of the State to observe the indigenous peoples' treaty rights; the express or tacit language in the instrument implying the relinquishing of indigenous rights to lands and resources; the specific requests made to indigenous peoples prior to entering into the treaty: peace, friendship, land cession or cession of indigneous governments; the exact nature of treaty agreement.)

6. The substantive contents of the treaties, agreements or other constructive arrangements.

7. The authoritative language(s) in which the treaties, agreements or other constructive arrangements were concluded.

(The existence of different language versions of the treaty, including indigenous languages; updating, in terms of language, of the treaty.)

8. Applicable rules of interpretation of the treaties, agreements or other constructive arrangements (of both their texts and connected legal instruments).

(In the case of reinterpretation: the possibility for indigenous peoples to hold the Government to the original provisions of the treaty; the existence of legal means for indigenous peoples to reject formally reinterpretation they disagree with; consultation with treaty peoples regarding changes proposed by the State; the existence, within present implementation machinery, of the requirement to consult with the indigenous party.)

9. Conflict resolution provisions of the treaties, agreements or other constructive arrangements.

(Settling of disputes in relation to treaty interpretations; the existence of mechanisms within the treaty provisions to resolve outstanding disputes.)

10. Methods of registration and publication of the treaties, agreements or other constructive arrangements.

(Transmission of knowledge contained in the treaty from generation to generation; written or oral transmission; the sharing of treaty knowledge by all, or the existence of a specific group of individuals having exclusive knowledge.)

11. Constitutional and legislative provisions on the conclusion of the treaties, agreements or other constructive arrangements, as well as the constitutional and legislative provisions on the application and termination of such instruments.

(The decision-making authority with regard to the implementation of the treaty provisions; the position of indigenous peoples on the treaty mechanism; right of veto for indigenous peoples on issues directly related to the treaty.)

12. The juridical status and official recognition by States and indigenous peoples of the treaties, agreements or other constructive arrangements.

13. Practical consequences for all parties resulting from the implementation, or lack thereof, of the treaties, agreements or other constructive arrangements.

(Recognition, through provisions of the instruments and consequent practice, of indigenous legal systems.)

14. Ongoing or planned negotiations for the conclusion of new treaties, agreements or other constructive arrangements, as well as for the amendment or modification of existing ones.

15. Treaties, agreements or other constructive arrangements which have been terminated, abandoned or rendered obsolete by indigenous peoples or States, either unilaterally or bilaterally.

(The existence of administrative or legislative measures altering the nature of the treaty relationship; steps or measures taken to actually terminate the treaty.)

PART III

16. What is the position of your people/organization with respect to the principles and norms that govern the interpretation of treaties and other instruments?

17. Would you be willing to make a new treaty today with the national Government? If your answer is no, please explain why. If your answer is yes, please indicate what you want to include in a new treaty.

18. What do you think would be the best way to see that treaties with indigenous peoples are enforced and respected?

19. What measures have indigenous peoples/organizations undertaken to resolve situations of conflict arising from treaty, or non-treaty, relations between States and indigenous peoples?

20. Does your Government currently have authority to make treaties with indigenous peoples? How would it be exercised?

21. Does your Government currently have authority to make other kinds of agreements with indigenous peoples? With what objects, and by what procedure?

22. Would you recommend that, in the process of treaty making and treaty application, indigenous peoples and States establish relations in political, cultural and economic spheres of interaction?

23. Does your people/organization have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?

24. Please provide any additional information you consider relevant.

Annex IV

Opening statement
by Prof. Erica-Irene A. Daes

Chairperson/Rapporteur of the Working Group
on Indigenous Populations

Palais des Nations, Geneva
22 July 1991

Distinguished fellow members of the Working Group;

Distinguished Representative of the Secretary-General;

Distinguished representatives of Governments, indigenous peoples, specialized agencies, of intergovernmental organizations and of non-governmental organizations;

Ladies and gentlemen.

Please allow me, first of all, to express to you my profound gratitude for having elected me, for eight times, Chairman/Rapporteur of the Working Group on Indigenous Populations. I accept the important task with humility and I will, as always, do my very best to preside over the debate with a sense of great responsibility and to report on our proceedings in an objective, constructive and progressive manner.

I would also like to welcome all representatives of indigenous peoples' organizations and communities as well as representatives of Governments, observers from other bodies of the United Nations system, and representatives of non-governmental organizations and human rights activists.

We also have present interested scholars and students and I am pleased that they are with us.

We are here to work together, to learn one from the other, reach an understanding and come to an agreement and concord.

This is the ninth session of the Working Group on Indigenous Populations. This ninth anniversary, so to speak, gives us an opportunity to reflect on what has been done, to evaluate our own work and this occasion especially provides an opportunity to look forward to what remains to be achieved. In this connection, I would like to underline that the Working Group, with the valuable assistance of all of you - that is to say - indigenous representatives and representatives of Governments - has already completed significant achievements. Thus, the Working Group has basically contributed to breaking down the barrier of ignorance that existed in the international community about the vital importance of the problems, needs and aspirations of indigenous peoples. Indeed, I can say it has helped to raise greater awareness even among the United Nations competent organs, bodies and secretariat.

We all of us understand the important values indigenous peoples possess, your desire to have greater control over your own lives, your special relationship to the land and nature, the vitality and uniqueness of your cultures, your particuar knowledge of fragile environments, and the various legal practices or legal or social customs which make your people distinct and an important part of the family of peoples that share this Earth.

Our Working Group has expanded physically. We are pleased to see an increased number of representatives from indigenous peoples, often from remote communities, senior government officials, including ministers, academics and many other distinguished individuals to our meetings.

Our discussions, within the framework of the mandate of the Working Group are wide ranging, often go far beyond the strict confines of human rights and embrace questions of economics, resource management, environment, ethics, religion, traditions, culture and identity.

Indigenous peoples have told us that their human rights are part of a total quest for well-being and this holistic approach which recognizes the interconnection of development, peace, environment and human rights issues, I sense, is one which is increasingly recognized by the United Nations itself. I make these brief comments because I think that the Working Group has contributed greatly to this wider understanding of indigenous peoples and the elimination of ignorance is the first step in the promotion and recognition of human rights.

But having made these comments I want to look to the future and especially to the activities we will undertake during the two weeks we have together now. This is the second extended session of the Working Group and we must use the time at our disposal profitably. It is my view that the major task before us this session is standard-setting and it is vital that we make significant progress this year. This means that we must now approach the elaboration of the draft declaration of indigenous rights in a less discursive and more concrete manner.

For this reason I have revised the draft text which was contained in annex 2 of last year's Working Group report in the light of the comments made by Governments, specialized agencies, indigenous peoples' organizations and our own informal drafting groups. I propose this year that we remain in plenary during the entire two weeks and that during the first week we deal with item 4 and during the second week we deal with items 5 to 7. It is my belief that substantial progress can be made by reading, amending where necessary, and adopting the articles of the draft declaration one by one. In order to facilitate our work, I have prepared the revised declaration as contained in document E/CN.4/Sub.2/1991/36 in the following way. On the left hand side of the page you will find my own suggestions and on the right hand side of the page the suggestions proposed by Governments, indigenous peoples' organizations and the three informal drafting groups which met last year. I have not included general comments among the texts on the right hand side of the page since these are available in previous Working Group reports.

I do not want to underestimate the difficulties that lie before us. There are certainly still a number of principles where consensus does not yet exist. But there are many areas of agreement where extensive debate has taken place and I hope that further long discussion may not be necessary. If there is unanimity, I hope that there can be a fairly rapid adoption.

We will begin this technical work on the declaration on Tuesday morning and I wish to make an appeal to all participants to be brief, to make concrete suggestions about the text, and to avoid to make general comments. It is in the interests of us all, and especially indigenous peoples, that we adopt a significant number of articles during this session. I therefore urge everybody to address the language of the articles under discussion and not allow themselves to be diverted into making general remarks which do not advance our work.

Our discussions of the second week will begin with item 5: the review of developments. This is an important part of the mandate given to us by the Economic and Social Council in its resolution 1982/34 but I urge all participants to be concise, factual and constructive. It is essential to the Working Group that it is kept informed about developments which have taken place in the previous 12 months affecting indigenous peoples. This is necessary both for a greater understanding of the human rights situation of indigenous peoples as well as of assistance in our standard-setting work. However, and I know I repeat this many times, our Working Group is not a chamber of complaints. We have no authority to act upon such information. There are several other fora where allegations of human rights violations against indigenous peoples can be raised. It is my hope, therefore, that we can all exercise self-restraint and that sufficient time remains for a full discussion of the other matters on our agenda.

The General Assembly by its resolution 45/164 proclaimed 1993 the International Year for the World's Indigenous People. The Assembly resolution is a recognition by the international community of the special situation of indigenous peoples. It also provides an opportunity to further raise public awareness of issues of concern to indigenous peoples and gives a possibility for the entire United Nations system to undertake activities which bring direct benefits to indigenous peoples. A second paper on the International Year prepared by Mr. Eide and Ms. Mbonu will be available as document E/CN.4/Sub.2/1991/39 and it makes further concrete recommendations about both possible activities and the practical arrangements which would be necessary to ensure that action really does take place. We do not want the International Year to be a lot of empty words; we want there to be real advances as a result of the Year. But the Year is for indigenous peoples and it is your opinions and suggestions which are important. I therefore urge you all to use our few days together to make concrete proposals and suggestions so that the Working Group can contribute to the success of the Year.

The contributions of the Working Group and of the Sub-Commission were also considered important by resolution 1991/57 of the Commission on Human Rights. I take this opportunity to express my gratitude to the member States of the Commission on Human Rights which adopted the aforementioned important resolution, without a vote, and in particular to the delegation of Canada, which presented it.

Distinguished participants, ladies and gentlemen,

You will note that under item 7 of the agenda of the present session of the Working Group, there is a reference to the protection of the intellectual property of indigenous peoples. Many indigenous peoples have expressed their interest in this matter.

Also, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1990/25 on "Ownership and control of the cultural property" of indigenous peoples, without a vote. According to this resolution, I have prepared a working paper on this question. This is contained in document E/CN.4/Sub.2/1991/34. This issue is of great importance to indigenous peoples and it is my hope that further suggestions can be made by participants about the contents of this preliminary paper and about any future work which might be necessary to enhance the study. I state clearly in the working paper and I reiterate this today: our intention is not to duplicate the excellent work already being done by UNESCO and other organizations but to complement such activities by an examination of the specific human rights concerns of indigenous peoples on this significant topic. I believe this is correctly within our competence and mandate.

The Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, Mr. Miguel Alfonso Martínez, will present his preliminary report under item 6 of our agenda and he will have an opportunity at that time to share his initial findings with us and outline future directions.

This year the Voluntary Fund for Indigenous Populations has been able to assist 31 indigenous people representing 28 indigenous organizations from 19 countries. I am very pleased that many of the people brought over by the Fund are here for the first time and can contribute to our discussions and hopefully return to their peoples and report on what they have seen and learned. This allows our work to reach many communities which have no possibility to make the long journey to Geneva. I wish to thank the five members of the Board of Trustees for the Fund who are responsible for the disbursement of the travel grants. I wish also once again to thank the Governments of Canada, Cyprus, Finland, Japan, Netherlands, New Zealand, Norway, Philippines, Sweden, Switzerland and Tunisia for their generous contributions to the Fund; in particular, I want to thank the Shimin Gaikou Centre of Japan, the Hokkaido Parliamentary Delegation of the Liberal Democratic Party of Japan, the Association of Constructing Companies in Hokkaido, the Association of Paving Companies of Hokkaido, and the Association of Chambers of Commerce of Hokkaido, which responded to my appeal for the Voluntary Fund and have given 1,000,000 yen, as their financial support of the Fund.

Under item 7 of the agenda we will have the opportunity to discuss future meetings related to indigenous peoples. I am pleased to inform you all that the meeting of experts on indigenous self-government foreseen under the programme of activities of the Second Decade to Combat Racism and Racial Discrimination as contained in General Assembly resolution 42/47 will take place in Nuuk, Greenland, from 24 to 28 September 1991. A technical meeting on indigenous practices in sustainable development has been authorized by the

Economic and Social Council in its resolution 1990/238 and I am informed that all efforts are being made to meet early in 1992 in advance of the United Nations Conference on Environment and Development so that any resulting report can be ready before the Conference. Finally I would like to draw your attention to the report prepared by the United Nations Centre on Transnational Corporations in accordance with the request of Sub-Commission resolution 1990/26. This document arrived only three days before our meeting and copies will be available only in English as document E/CN.4/Sub.2/AC.4/Misc.1.

These brief comments complete my overview of the agenda which we have before us during this session. We have a formidable task ahead of us. We have a great many topics for discussion and a great many participants as I said already. Many of the items which we have on the agenda are part of the building work which is necessary to establish full human rights and fundamental freedoms for all the world's indigenous peoples. I wish to give the opportunity to speak to all those who wish to. This requires that we all of us speak to the point and respect the right to speak and participate of others.

Now, as it is the established practice, I have undertaken, on behalf of the Working Group and as its Chairman/Rapporteur, two visits since the last session of the aforementioned Working Group. The basic purpose of these visits are to gain first-hand information, to communicate directly with Governments and the indigenous peoples concerned, as well as to provide information on United Nations activities in the field of indigenous peoples' rights and to identify issues which need to be taken up in standard-setting.

My first visit was to Brazil in December 1990. Thus, I received an invitation from the Government of Brazil to visit with the head of the Human Rights Office in New York, Mrs. Elsa Stamatopoulou, the Indians in the Amazonian area and, in particular, the Yanomami People. The Brazilian Government and the FUNAI organization put at my disposal all the means, which I needed to visit the Yanomami People in very remote places in the heart of the Amazonian jungle. I submitted a confidential report to the Secretary-General containing my impressions, comments and suggestions.

The Secretary-General, within the framework of his good offices in the humanitarian field, is in consultations with the Government of Brazil for the action which has been undertaken to assist practically and effectively the Yanomami People. I would like to take this opportunity to express once again my gratitude to the Government of Brazil for its invitation and for making possible my humanitarian mission to many isolated communities.

My second visit, accompanied by my distinguishd colleagues, Professor R. Hatano and the former Secretary of the Working Group, Mr. G. Alfredsson, was to Japan last May. Thus, at the invitation of the Ainu People of Japan, I visited in particular a great number of cities and places in which the Ainu People live in Hokkaido.

We were happy to attend the General Conference of the Ainu Association of Hokkaido and to deliver the three commemorative lectures at Sapporo, Kushiro City and Tokyo on the various activities of the United Nations Working Group on Indigenous Populations and of the United Nations for the cause of indigenous peoples' rights.

Likewise, at the many other stops on the tour, we benefited from meetings with Members of Parliament, with officials at the Foreign Ministry, with the Governor of Hokkaido and his staff, and with several mayoral offices, as well as with diplomats, academics and representatives of several non-governmental organizations.

I would like to express my deep gratitude to the Ainu People for all they have done to make my visit successful and useful and to the Government of Japan for their particular interest in our work, the constructive dialogue and the assistance they have provided to us.

It is my sincere hope, that this session will be one of our most productive and successful sessions of the Working Group with all your valuable assistance and cooperation.

Closing statement
by Prof. Erica-Irene A. Daes

Chairperson/Rapporteur of the Working Group
on Indigenous Populations

Palais des Nations, Geneva
2 August 1991

Distinguished Representatives of Observer Governments;

Distinguished Representatives of Indigenous Peoples and Nations;

Distinguished Representatives of specialized agencies and intergovernmental and non-governmental organizations;

Dear colleagues and friends,

We have now completed the work of the ninth session of the Working Group on Indigenous Populations. As in previous years, we have had a very busy and heavy agenda.

At the ninth session of the Working Group, 24 Observer Governments attended, 10 organizations of indigenous peoples in consultative status with the ECOSOC and 72 Indigenous Nations and organizations were represented, and a further 17 non-governmental organizations and 88 distinguished experts, scholars, students and other concerned individuals have also participated at our meetings. Thus, nearly 500 people have attended the ninth session of the Working Group on Indigenous Populations.

The large number of Governments and indigenous organizations which attended our meeting this year is a testimony to the great importance and urgency of the work being carried out by the Working Group on Indigenous Populations.

The mandate of the Working Group, as you know by now, is twofold: the review of developments pertaining to the promotion and protection of the human rights and fundamental freedoms of Indigenous Peoples and the evolution of standards concerning the rights of Indigenous Peoples.

There are nearly 300 million Indigenous Peoples living in all regions of the world and most of them face many diverse problems and serious difficulties of a political, economic, legal and social nature. It should be emphasized that Indigenous Peoples are often confronted by discriminatory treatment and by problems related to health, education, employment and environment and threats against the preservation of their ethnic and cultural identity.

It is vitally important for the United Nations to be kept informed about the current situations of Indigenous Peoples around the world.

This reliable information is vital to members of the Working Group, to the Representatives of Governments and to all participants. We are all learning from the constructive dialogue between Indigenous Peoples, the Governments and the members of the Working Group. I am aware that during the consideration of the item "Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations", certain Governments were disturbed by the statements made by some Representatives of Indigenous Peoples. Despite these cases, I would like to state that we should continue to protect our democratic and liberal forum - our Working Group. This is the only United Nations forum in which such a dialogue can be developed for the benefit of all parties concerned. In this respect let me recall that in Ancient Greece, the mother of democracy, the Great Pericles invited the Elders to the agora, which was a quasi parliament at that time, to listen mainly to the complaints and the grievances of all Athenians. Pericles, one of the greatest leaders and orators of his time, took measures to eliminate the causes of his peoples' grievances; he never thought to dissolve the agora in order to avoid listening to the complaints.

The Working Group atmosphere during the present session was like a true and democratic assembly, in which Government representatives, Indigenous Peoples' representatives, representatives of the specialized agencies, members of the Working Group, scholars and other individuals openly and freely exchanged their views. In this assembly pluralism, freedom of opinion and expression and the principles of equality and non-discrimination have prevailed throughout the session. This fact should give satisfaction to us all.

Distinguished participants,

It is my opinion that we have been able to make significant progress in our standard-setting activities thanks to you. Our Working Group composed, as I have said already, of so many participants from every corner of the world community and from different political and legal backgrounds, worked hard and systematically and succeeded in making a real substantive progress in preparing the draft declaration on the rights of Indigenous Peoples.

It was a unique situation to amend the text of such an important instrument - such as is the aforesaid declaration - with the active participation of so many people. Thus, the preambular paragraphs and operative paragraphs up to article 18 of the draft declaration on the rights of Indigenous Peoples have been substantially revised and amended and, I believe, significantly improved. Our discussions and the concrete proposals made by all participants at the meetings were listened to with great attention in particular by members of the Working Group. We considered these comments and examined these suggestions carefully and our text was presented to you in the form of Conference Room Papers 1, 2 and 4. Your general comments on the revised preambular and operative paragraphs were noted and any further necessary technical or editorial changes will be made accordingly. It is the intention of the Working Group to submit the revised text of the draft declaration on the rights of Indigenous Peoples, as agreed upon by the members of the Working Group at its first reading to Governments, intergovernmental and non-goovernmental organizations, and Indigenous Peoples' organizations requesting their adhoc comments, amendments and suggestions. It is my

sincere belief that we have made considerable progress in elaborating further the draft declaration. I would like to be allowed to repeat that the progress we have made this year is due to the constructive participation of many Governments and Indigenous Peoples in a spirit of dialogue, understanding and cooperation. As I have said on many occasions, our draft declaration must be built on cooperation and mutual understanding and not on confrontation.

Let me now make some brief comments about our future work. It is the intention of the Working Group to request the Sub-Commission once again to extend our tenth session so that we have 10 working days. This will allow us to continue to make progress with the draft declaration and to provide sufficient time to discuss the other important items on our growing agenda. It is my hope that at the tenth session of the Working Group we will make similar advances, completing our first reading of the draft declaration and beginning a second reading of the entire declaration. I will not hide from you my hope that by 1993 - the International Year for the World's Indigenous People - the Working Group will have a draft declaration which will be a workable, balanced and consensus text which could be ready to be submitted to the higher bodies of the United Nations.

The next 12 months will be busy. Do not think that when you leave tonight that we - the members of the Working Group and the staff of the Centre for Human Rights - forget you. We do not. We will immediately be busy preparing our report which will contain important recommendations and relevant draft resolutions. As you know, there are several important reports on subjects under consideration by the Working Group and these we will be preparing. We will be organizing other important meetings and seminars, where we hope that some of us can meet again. We will also be considering your suggestions and elaborating our own proposals about the theme and activities for the International Year, which will be a worldwide focus for attention to the concerns and aspirations of Indigenous Peoples.

I would like to reiterate that the significant work, which we have accomplished here, is a collective work to which all of us and, in particular, the Indigenous Peoples have greatly contributed.

In this respect I would like to express my gratitude to my distinguished colleagues, members of the Working Group: Professors Alfonso Martínez, Hatano, Türk and Ms. Mbonu. I would like to express my appreciation and sincere thanks to Professor Yokota, the alternate of Professor Hatano, for his valuable contribution to our work. Also, my grateful thanks go to the distinguished representatives of the Governments, including, in particular, the Honourable Minister of Aboriginal Affairs of Australia, Mr. Robert Tickner, to all the distinguished representatives of the Indigenous Peoples and Nations, to the representatives of the United Nations Centre for Transnational Corporations, to the International Labour Organisation and the Organization of American States for their reports and constructive proposals. I express my particular gratitude to the distinguished representative of the Secretary-General, Mr. Keilau, and to the distinguished Secretary of the Working Group, Mr. Burger, to Mr. Austen-Peters, Ms. Brouwer and Ms. Mann. I want to express my appreciation and warm thanks to the interns, Mr. Housh, Ms. Egawa, Ms. Garcia, Ms. Amelinskx and Ms. Meylink, who have helped us so effectively.

Further, I would like to reiterate my gratitude, appreciation and congratulations to the International Service of Human Rights, the DOCIP and other volunteers, who provided throughout the session technical assistance to Indigenous Peoples.

Furthermore, I would like to thank warmly the interpreters and the Conference Service for helping us with patience and efficiency.

Dear participants,

with these words, I would like, once again, to assure you of the continuing concern and support of the United Nations and to offer to you all my very best wishes for a safe return to your countries. In particular I would like to express my wishes to the Indigenous Peoples for their well-being, prosperity and achievements of their aspirations.